HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
HON'BLE SRI JUSTICE M. VENKATESWARA REDDY

Dated: 06-02-2007

WRIT PETITION No. 16165 of 2000
And
WRIT PETITION No. 19727 of 2000

W.P.No. 16165 of 2000

Between:

K. Padma and another.

..Petitioners

And

Mohd. Iqbal and two others.

..Respondents.

W.P.No. 19727 of 2000

Between:

Shantha Bai

..Petitioner.

And

Mohd. Iqbal and two others.

..Respondents.

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COMMON ORAL ORDER: Per : B. Prakash Rao, J

The relief sought and also the respondent in both the writ petitions are one and the same, hence the writ petitions are being disposed of by this common order.

The petitioners filed these writ petitions seeking to call for the records and issue a writ of Certiorari by quashing the common judgement dated 28-01-2000 made in L.G.A.Nos.14 and 15 of 1999 on the file of Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad. The writ petitioners are the petitioners in O.P.Nos. 165 of 1988 and 166 of 1988, which were filed under Section 7(a) of A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') before the learned Chief Judge-cum-Special Tribunal under Act XII of 1982, City Civil Court, Hyderabad seeking to declare that the petitioners are lawful holders and possessors of the petition schedule properties by virtue of registered perpetual lease deeds. By a common order dated 22-10-1998, the learned trial

Judge dismissed the original petitions -- O.P.Nos. 165 and 166 of 1988 holding that the petitioners have failed to prove their title in respect of the petition schedule property and also further held that though the respondent in original petitions (1st respondent herein) failed to prove his title to the petition schedule property, he is not a 'land grabber' within the meaning of Act. Aggrieved thereby, the petitioners filed L.G.A.Nos.14 and 15 of 1999 before the Special Court under the Act. The Special Court by common judgment dated 28-01-2000 dismissed the appeals as 'not maintainable'.

Briefly stated the facts of the case are that both the petition schedule properties are adjacent to each other. The property originally belonged to the Jagannatha Swamy Temple, which had obtained the same by way of a munthakab. The temple executed a perpetual lease in the year 1952 in favour of one Gopal Rao and after his death, his wife Sathemma and son Hanumantha Rao executed a perpetual lease in favour of one Yadagiri Rao. The said Yadagiri Rao in turn executed a perpetual lease deed on 24-04-1985 in favour of the petitioners.

While so, it is alleged that the respondent

No.1 instituted a fictitious suit O.S.No. 5643 of 1987 on the file of learned VI-Assistant Judge, City Civil Court, Hyderabad against third parties viz., Abdul Gafoor, Meeram Saheb, Fazle Mohd. Khan and Jagadiswar on the basis of an alleged lease deed in respect of the property in question. The said suit was decreed on 26-04-1988. In execution of the decree, E.P.No. 3 of 1988 was filed and the property in the possession of the petitioners was delivered to the first respondent. Alleging that the decree was obtained illegally and suppressing the facts, and the execution of the decree was done with an ulterior intention, the above original petitions have been filed for the reliefs adverted to above. It is also averred that obtaining delivery of possession of the property by 1st respondent in execution of a decree, is an act of 'land grabbing'.

The petitions were resisted by filing counters denying the averments made in the petitions. It is stated that Sri K. Jagadiswar suffered the decree in O.S.No.5643 of 1987 and in execution of decree, the court delivered the possession of the property to the respondent No.1, that K. Jagadiswar set up the petitioners to file the original petitions, that late Syed Khaja Mahmood Ali was the original

owner of the property during his life time, that petition schedule premises forms part of plot No. 24, that Late Syed Khaja Mahmood Ali executed a will dated 23-12-1965 bequeathing plot Nos. 30 and 24 absolutely in favour of the respondent No.1. The respondent No.1 prayed for dismissal of original petitions on the ground that he is the owner and possessor of the property in question.

The primary authority, basing on the pleadings, framed the issues.

During the trial, P.Ws. 1 to 3 were examined on behalf of the petitioners, while R.W.1 was examined on behalf of the respondent. Exs.A.1 to A.25 were marked on behalf of petitioners while Exs.B.1 to B.37 were marked on behalf of respondent. Exs.C.1, report of the Commissioner with annexures and Ex.C.2, report of the Mandal Revenue Officer with annexures were marked by the primary authority.

Heard Sri E. Manohar, learned senior counsel for the petitioners and none appeared on behalf of the respondent.

From a perusal of the material available on record, two points arise for consideration in these writ petitions viz., (1) whether in the facts and circumstances, the possession as claimed by the

respondent would amount to ‘land grabbing’, and (b) whether a person who is in possession of the building on the land which is allegedly grabbed can fall within the definition of the ‘land’ under the provision of the Act.

Having regard to the aforesaid issues, which are purely technical in nature, it is not necessary to go into the merits of the claims put forth on either side. However, the fact remains that the petitioners claimed right, title etc., over the property in question by virtue of lease deeds, whereas the respondent claims right, title etc., over the land in question by virtue of decree obtained from a civil court against the third parties and had also come into possession of the same pursuant to the execution of the decree. Admittedly, the petitioners are not parties to the suit. There is no explanation as to why they were not made parties to the suit filed by the respondent. It is also their case that the petitioners have absolutely no notice or knowledge of the filing of suit and inducting the respondent into possession of the land in question in pursuance of execution of decree.

In the above circumstances, the issue as to whether the possession through the process of a

court of law, would amount to land grabbing has to be decided by the Tribunal, especially when the allegation is that the person, who obtained the decree, does not have right or title over the property. Mere obtaining of a decree from the civil court does not confer any right or title over the property if it is alleged that the decree was obtained by fraud or in collusion between the parties. There is no other evidence on record to show that either the petitioners or the respondent have right or title over the property in question. The respondent claims to be in possession pursuant to the execution of the decree obtained in respect of the land in question through process of court, that too in the suit wherein the petitioners were not parties to the proceedings. The possession in such situation cannot be construed that the respondent has perfected his right and title over the property in question.

Section 2 (e) of the Act defines the expression '*land grabbing*' which reads as under:

> 2 (e) "*Land grabbing*" means every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of

> such lands, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorized structures thereon for sale or hire, or give such lands to any person or rental or lease and licence basis for construction, or use and occupation, of unauthroised structures; and the term 'to grab land' shall be construed accordingly.

A reading of the above provision clearly shows that the acts of any person or group of persons without any lawful entitlement and with a view to illegally taking possession of such lands or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands or construct unauthorised structures thereon would amount to 'land grabbing'. The appellate court held that the respondent to whom the property was delivered through the process of court in execution of the decree cannot be termed as 'land grabber'. The suit was dismissed by the appellate court by allowing the appeal, and the act of delivery of possession by the court to the respondent will not in any way lend credence to the proposition that the respondent is a 'land grabber' as defined in the Act. The remedy of the petitioners lies elsewhere.

The second aspect to be dealt with is

whether the occupation of the building/property constructed on the land would fall within the definition of the 'land' as defined in the Act. The expression 'land' had been defined in Section 2 (c) of the Act, which reads as follows:

> 2 (c) '*land*' includes rights in or over land, benefits to arise out of land and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth;

Having regard to the aforesaid clear definition especially in view of the nature of inclusion of rights in or over the land, benefits to arise out of land and buildings, structures and other things attached to the earth or permanently fastened to anything attached to the earth, there cannot be any second opinion to hold that the said the definition 'land' would only apply to areas where there is open land and not to the structures or construction attached to the earth or thereupon. Therefore, we hold that the very definition of 'land' denotes both land and structures thereon.

Having regard to the aforesaid findings, the writ petitions are allowed. Both the orders of the Tribunal are set aside and the matter is remitted back to the Chief Judge-cum-Special Tribunal, City Civil Court, Hyderabad to dispose of the matters

afresh on merits, in accordance with law after conducting regular enquiry and after giving due and sufficient opportunity to both sides. It is always open to both the parties to adduce evidence, if any. The Tribunal shall dispose of the cases within a period of six months from the date of receipt of a copy of this order. No costs.

B. PRAKASH RAO, J

M. VENKATESWARA REDDY, J

06-02-2007
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